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Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1973

NO. 72-1705

MARGARET CARINI,

Petitioner

vs.

ZONING BOARD OF APPEALS OF THE TOWN OF WEST HARTFORD

Respondent

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

Bruce Mayor
190 Trumbull Street
Hartford, Connecticut 06103
Counsel for Petitioner

MOTION FOR LEAVE TO FILE PETITION FOR REHEARING

Petitioner moves for leave to file the attached petition for a rehearing of this Court's order dated October 9, 1973, denying the petition for a writ of certiorari to the Supreme Court of the State of Connecticut. This motion is made because counsel for petitioner was under the mistaken impression that the office of the Clerk of the Supreme Court was not open on Saturday and that the 25th day of the period would thus fall on Monday, November 5, 1973. Copies of the petition were mailed from Hartford on Friday, November 2, 1973 in what counsel for Petitioner thought was a timely manner.

Bruce Mayor
Counsel for Petitioner

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PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

Bruce Mayor
190 Trumbull Street
Hartford, Connecticut 06103
Counsel for Petitioner

PETITION FOR REHEARING

Petitioner presents her petition for a rehearing of this Court's order dated October 9, 1973, denying the petition for a writ of certiorari to the Supreme Court of the State of Connecticut, and, in support thereof, respectfully shows:

GROUNDS FOR REHEARING

TO REVOKE A ROOMING HOUSE USE FOR PETITIONER'S PREMISES WHICH HAD BEEN SO OPERATED FOR OVER 18 YEARS, BECAUSE LICENSE GRANTED 'ILLEGALLY', IS TO DENY PETITIONER THE EQUAL PROTECTION OF LAWS AS GUARANTEED BY THE 14th AMENDMENT.

The Petitioner's premises began housing roomers in 1941. The rooming house licensing ordinance adopted by the Town of West Hartford on May 24, 1949 was essentially designed to supervise the safe operation of the town's rooming houses. Pursuant to its provisions, the Town Building Inspector was empowered to grant a license if inter alia "...the location of said rooming house complies with the zoning regulations." § 14.3.4, Town of West Hartford ordinances. Violations leading to revocation of the license were confined to those involving conduct and maintenance of the building. Id § 14.3.7. The Petitioner's dwelling was duly licensed in 1949 based in part on a determination by the

then inspector, by law, that zoning did not prohibit its continued use as a rooming house. The license was re-issued each of the next 18 years by that office.

The Respondent contends that the initial licensed use of the Petitioner's premises as a rooming house in 1949 was illegal, and that the continued licensing for the next 18 years did not serve to remedy the illegality. That contention is based upon the Respondent's recent assumption that since the inception of zoning in West Hartford in 1924, rooming houses have never been an allowable use in Petitioner's zone. Therefore, rooming house licensing ordinances of 1949 would apply only to those premises used for roomers prior to 1924, since a legal nonconforming use would have to predate zoning. The Petitioner was informed in 1967 that failure of the house to exist as a legally existing nonconforming use, rendered the license inapplicable at its granting and 18 years henceforth. The only way, then, for the Petitioner to continue to hold a rooming house license at this point in time 18 years after its issue for the premises, was to seek a variance, which she did, and which was denied her. That litigation is the basis of the petition for certiorari.

The house dealt with here is not on one of the town's quiet side streets where roomers might have come and gone unnoticed for that lengthy period of its history. Rather, its location at a corner of two heavily trafficked resi-

dential streets, demands public attention to its imposing victorian presence. For the nature of operation of that highly visible dwelling to exist for 18 years as a 'mistake of fact' contrary to a zoning policy which the Respondent would now have we believe is basic to the welfare of the neighborhood in question and the town, is nothing short of incredible.

For the Respondent to hold that the 1949 ordinance is a nullity as to those premises, such as the Petitioner's, which are not legally existing non-conforming uses, despite their having been duly licensed for a long period of time, is to deny the Petitioner equal protection of the law. The ordinance should remain the law for Petitioner's premises by virtue of its many years use under legal license as well as for others who continue to hold a license under the act.

Even allowing that the use in 1949 was illegal for the before mentioned reasons, to which the Petitioner has steadfastly disagreed, the result which has followed is so ludicrous and unjust as to require examination of the traditional concept of municipal inmunity for acts of its employees on which the Respondent relies below.

Recognizing the general rule that, without more, the fact that city officials fail to enforce a zoning ordiance against a violator, does not estop a city from subsequently enforcing it,

58 Am Jur 1045 § 193/ALR 2d 338,

and inasmuch as we have here not merely a failure to enforce a zoning provision, but positive ministerial action based on an alleged mistake of fact which withstood a period of over 18 years of possible administrative scrutiny, traditional concepts should not dictate absurd results. This harmless 'illegality' does not demand sudden correction at this time.

Just as a municipal officer can bind his government by acts which come within the just exercise of his official powers in order to protect those acting in reliance, public policy dictates that a longstanding, although technically ill-founded, zoning policy for a neighborhood zone, should not be dispensed with against all or part of the homes within. The relative harm worked on the Petitioner, whose large victorian property is ill-suited for any other use,in light of any possible benefit to the community, heavily tilts the scales of justice.

Here we have facts which soften even the most hard rule of law. The qualifying phrases, attached to those rules in areas of zoning and municipal corporations such as, "generally",and "as a general rule", provide for the essential element of fairness in judicial resolution of the controversy at hand. As to their application to the law of estoppel and the concept of laches, it is submitted that as against the Town of West Hartford, the facts herein presented compel

just such a reading of those doctrines in order to prevent manifest injustice, and for them to so claim would be unconstitutional as it deprives her of the right to equal provision of the laws.

The consistent stand of the office of the Building Inspector from 1949 to 1967 in allowing rooming houses in Petitioner's property zone, should prevent him and the town from now examining the decision made over 18 years ago in order to revoke the Petitioner's license for illegality. The ordinance should continue to apply to the Petitioner's house as it did for that period. And just as that ordinance protects those who are, from the Respondent's view, legally licensed under it, it should similarly protect the Petitioner by preventing the arbitrary revocation of her license.

CONCLUSION

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that, upon further consideration, writ of certiorari issue to the Supreme Court of the State of Connecticut.

Bruce Mayor
Counsel for Petitioner

CERTIFICATE OF COUNSEL

I, Bruce Mayor, counsel for the above-named petitioner, do hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Rule 58, subdivision 2, of the Rules of this Court.

Bruce Mayor
Counsel for Petitioner